

Date of reserved for orders : 25.06.2026
 Date of pronouncement : 25.08.2026
 Date of uploading : 25.08.2026

APHC010356842015



**IN THE HIGH COURT OF ANDHRA PRADESH
 AT AMARAVATI
 (Special Original Jurisdiction)**

[3520]

TUESDAY, THE 25th DAY OF AUGUST 2026

PRESENT

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 110/2015

Between:

1. PALAPARTHI SEEKHAR BABU, KRISHNA DIST & 2 OTHERS, S/O HANUMANTHA RAO, HINDU, AGED 30 YRS ,DEPENDANT , R/O GANDEPALLI VILLAGE, KANCHIKACHERLA MANDAL, KRISHNA DISTM.,(CLAIMANT).
2. PALAPARTHI VARALAKSHMI,, D/O SEKHAR BABU, HINDU, AGED 6 YRS, R/O GANDEPALLI VILLAGE, KANCHIKACHERLA MANDAL, KRISHNA DISTM.,(CLAIMANT) (2ND & 3RD PETITIONERS /CLAIMANTS ARE MINOR BEING REPRESENTED BY THIER FATHER, NATURAL GUARDIAN I.E. 1ST PETITIONER /APPELLANT).
3. PALAPARTHI NOOKESWARI,, D/OSEKHAR BABU, HINDU, AGED 6 YRS , R/O GANDEPALLI VILLAGE, KANCHIKACHERLA MANDAL, KRISHNA DISTM.,(CLAIMANT) (2ND & 3RD PETITIONERS /CLAIMANTS ARE MINOR BEING REPRESENTED BY THIER FATHER, NATURAL GUARDIAN I.E. 1ST PETITIONER /APPELLANT).

...APPELLANT(S)

AND

1. GARIMI VENKATESWARA RAO KRISHNA DIST ANR, S/O SATYANARAYANA, HINDU--AGED 32 YRS R/O. D NO: 3-6, TADIGADAPA VILLAGE, PENAMALURU MANDAL"KRISHNA DIST.

2.THE NEW INDIA ASSURANCE CO LID, REP BY ITS DIVISIONAL MANAGER, CONA HEIGHT, OPPOSITE AIR, PUNNAMMATHOTA, VIJAYAWADA.

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High Court to enhance the compensation granted in the Judgment and Decree passed in MVOP No. 281 of 2013 dated 14.10.2014 on the file of the Motor Accident Claims Tribunal Court-cum-XVI Addl. District & Sessions Judge, Nandigama as prayed in OP No. 281 of 2013 with costs and pass.

IA NO: 2 OF 2014(MACMAMP 42000 OF 2014

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

Counsel for the Appellant(S):

1.M UMADEVI

Counsel for the Respondent(S):

1..

2.ELEVATED AS JUDGE

3.C PRAKASH REDDY

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 111/2015

Between:

1.BOKKA YAESU & 2 OTHERS, S/O RASAI AH, HINDU, AGED 50 YRS COOLIE, R/O GANDEPALLI VILLAGE, KANCHIKACHERLA MANDAL, KRISHNA DIST (CLAIMANT)

2.BOKKA SAMUEL,, S/O YESU, HINDU, AGED 27 YRS, R/O GANDEPALLI VILLAGE, KANCHIKACHERLA MANDAL, KRISHNA DIST,,(CLAIMANT)

3.BOKKA ROSAI AH, @PEDA ROSAI AH, S/O YESU, HINDU, AGED 26 YRS , R/O GANDEPALLI VILLAGE, KANCHIKACHERLA MANDAL, KRISHNA DIST,,(CLAIMANT)

...APPELLANT(S)

AND

1. GARIMI VENKATESWARA RAO ANOTHER, S/O. SATYANARAYANA, HINDI, AGED 32 YRS R/O D NO: 3-6, TADIGADAPA VILLAGE, PENAMALURU MANDAL, KRISHNA DIST
2. THE NEW INDIA ASSURANCE CO LTD, REP BY ITS DIVISIONAL MANAGER, CONA HEIGHT, OPPOSITE A1R, PUNNAMMATHOTA, VIJAYAWADA.

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High Court to enhance the compensation granted in the Judgment and Decree passed in MVOP 282 of 2013 dt. 14.10.2014 on the file of the Motor Accidan Claims Tribunal Court Cum XVI Additional District & Sessions Judge Nandigama as prayed in O P 282 of 2013 with costs and pass

IA NO: 2 OF 2014(MACMAMP 42005 OF 2014)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

Counsel for the Appellant(S):

1. RAVI KUMAR TOLETY
2. UMADEVI MANCHALA

Counsel for the Respondent(S):

1. ELEVATED AS JUDGE
2. C PRAKASH REDDY

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 112/2015

Between:

1. BOKKA ROSAIAH @ PEDA ROSAIAH, KRISHNA DIST & ANR, S/O YESU, HINDU, AGED 26 YRS, COOLIE, S C PALLI, GANDEPALLI VILLAGE, KANCHIKACHARLA MANDAL KRISHNA DIST (CLAIMANT)

2.BOKKA ANNAMMA,, D/O BOKKA ROSAIAH@ PEDA ROSAIAH,
HINDU, AGED 3 YRS S C PALLI, GANDEPALLI VILLAGE,
KANCHIKACHARLA MANDAL, KRISHNA DIST (CLAIMANT) (2ND
PETITIONER /CLAIMANT IS MINOR BEING REPRESENTED BY
HER FATHER NATURAL GUARDIAN I.E. 1 PETITIONER
/APPELLANT)

...APPELLANT(S)

AND

1.GARIMI VENKATESWARA RAO KRISHNA DIST ANR, S/O
SATYANARAYANA, HINDI, AGED 32 YRS R/O D NO: 3-6,
TADIGADAPA VILLAGE, PENAMALURU MANDAL, KRISHNA DIST,.
2.THE NEW INDIA ASSURANCE CO LTD, REP BY ITS DIVISIONAL
MANAGER, CONA HEIGHT, OPPOSITE A1R,PUNNARNMATHOTA,
VIJAYAWADA

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High Court to enhance the compensation granted in the Judgment and Decree passed in MVOP 213 of 2013 dt. 14.10.2014 on the file of the Motor Accident Claims Tribunal Court Cum XVI Additional District & Sessions Judge Nandigama as prayed is OP 213 of 2013 with costs

IA NO: 2 OF 2014(MACMAMP 42001 OF 2014)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

Counsel for the Appellant(S):

1.UMADEVI MANCHALA

Counsel for the Respondent(S):

1.ELEVATED AS JUDGE

2.C PRAKASH REDDY

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 113/2015

Between:

1. MARKAPUDI KANTARAO, KRISHNA DIST & 2 OTHERS, S/O LATE SUNDARA RAO, HINDU, AGE 46 YRS, COOLIE, GANDEPALLI VILLAGE, KANCHIKACHARLA MANDAL, KRISHNA DIST (CLAIMANT) (CLAIMANT)
2. MARKAPUDI MANIKKYALA RAO", S/O KANTA RAO, HINDU, AGE 24 YRS, COOLIE, GANDEPALLI VILLAGE, KANCHIKACHARLA MANDAL, KRISHNA DIST (CLAIMANT)
3. MARKAPUDI SUNNY, S/O KANTA RAO, HINDU, AGE 24 YRS, COOLIE, GANDEPALLI VILLAGE, KANCHIKACHARLA MANDAL, KRISHNA DIST (CLAIMANT)

...APPELLANT(S)

AND

1. GARIMI VENKATESWARA RAO KRISHNA DIST ANR, S/O SATYANARAYANA, HINDI, AGED 32 YRS R/O D NO: 3-6, TADIGADAPA VILLAGE, PENAMALURU MANDAL KRISHNA DIST
2. THE NEW INDIA ASSURANCE CO LTD, REP BY ITS DIVISIONAL MANAGER, CONE HEIGHT, OPPOSITE AIR, PUNNAMMATHOTA, VIJAYAWADA.

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High Court to enhance the compensation granted in the Judgment and Decree passed in MVOP 225 of 2013, dt. 14.10.2014 on the file of the Motor Accident Claims Tribunal Court Cum XVI Additional District & Sessions Judge Nandigama as prayed in O P 225 of 2013 with costs and pass

IA NO: 2 OF 2014(MACMAMP 42003 OF 2014)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

Counsel for the Appellant(S):

1.UMADEVI MANCHALA

Counsel for the Respondent(S):

1.01687

2.ELEVATED AS JUDGE

The Court made the following:

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA
M.A.C.M.A.Nos.110, 111, 112 and 113 of 2015

COMMON JUDGMENT:

I. Introductory:-

1. All these four appeals are directed against the orders and decrees passed in M.V.O.P.Nos.281 of 2013, 282 of 2014, 213 of 2013 and 225 of 2013 on the file of the Motor Accidents Claims Tribunal-cum-XVI Additional District and Sessions Judge (for short “the learned MACT”) and arising out of the same/one road traffic accident dated 13.04.2012 with the involvement of the lorry bearing No.AP 16 TW 6568 and auto rickshaw bearing No.AP 16 TV 3184. Dissatisfied by the quantum of compensation and allowing the claim in part against the Insurance Company and the apportionment of liability among the two vehicles involved, the respective appeals are filed by the claimants.

2. All the four appeals are heard together. The details of the appeals are as follows:

Sl. No.	M.A.C.M.A. No.	M.V.O.P. No.	Details of claimants / appellants	Nature of claim	Date of order & decree	Result (M.V.O.P.)
1.	110 of 2015	281 of 2013	1.Palaparthi Seekhar Babu 2.Palaparthi Varalakshmi 3.Palaparthi Nookeswari	Death Deceased No.1 (Palaparthi Parvathi)	14.10.2014	Partly allowed
2.	111 of 2015	282 of 2014	1. Bokka Yesu 2. Bokka Samuel 3.Bokka Rosaiah @ Peda Rosaiah	Death Deceased No.2 (Bokka Mahalakshmi)	14.10.2014	Partly allowed

3.	112 of 2015	213 of 2013	1. Bokka Rosaiah @ Peda Rosaiah 2. Bokka Annamma	Death deceased No.3 (Mariamma)	14.10.2014	Partly allowed
4.	113 of 2015	225 of 2013	1.Markapudi Kantarao 2.Markapudi Manikkyala Rao 3. Markapudi Sunny	Death deceased No.4 (Aruna Kumari @ Chanti)	14.10.2014	Partly allowed

II. Case of the claimants:

3(i). On 13.04.2012, when Palaparthi Parvathi, Bokka Mahalakshmi, Mariamma and Aruna Kumari @ Chanti (hereinafter referred to as “the deceased persons”) were traveling in the auto rickshaw bearing No.AP 16 TV 3184 along with other coolies, at about 07:15 p.m. and when the Auto was near Ambarupet Cross Roads, a lorry bearing No.AP 16 TW 6568 (hereinafter referred to as “the offending vehicle”), coming from the opposite direction while overtaking another vehicle, came in a rash and negligent manner and dashed the auto, caused the accident. Whereby, the auto was crushed and completely damaged and four persons travelling in the auto viz. the deceased died on the spot.

(ii). A person by name G. Rebakar reported the matter to the Police, on the strength of which a case in Crime No.133 of 2012 for the offences under Sections 304-A, 337 and 338 IPC was registered by Nandigama Police Station.

(iii). The claimants in M.A.C.M.A.No.110 of 2015 are the legal representatives of the deceased, Palaparthi Parvati.

(iv). The claimants in M.A.C.M.A.No.111 of 2015 are the legal representatives of the deceased, Bokka Mahalakshmi.

(v). The claimants in M.A.C.M.A.No.112 of 2015 are the legal representatives of the deceased, Mariyamma.

(vi). The claimants in M.A.C.M.A.No.113 of 2015 are the legal representatives of the deceased, Aruna Kumari @ Chanti.

(vii). Respondent No.1 is the owner of the offending vehicle. Respondent No.2 is the Insurance Company with which the offending vehicle was registered. Hence, both respondents are liable to pay compensation as the accident has occurred due to the exclusive negligence of driver of the offending vehicle.

4. Respondent No.1 remained *ex parte*. Respondent No.2 contested the case.

III. Case of respondent No.2 / Insurance Company:

5. Driver of the auto is responsible for the accident. There was overloading and there was a wooden plank on other side of the driver of the auto. There were a total of '11' passengers in the auto at the time of accidents. The owner and Insurance Company of the auto are also necessary parties. The offending vehicle is falsely implicated. The driver of the lorry was not holding a proper and effective driving licence. Therefore, Respondent No.2 is not liable to pay compensation and in any event, the quantum of compensation claimed is excessive.

IV. Evidence:

6(i). Palaparthi Sekhar Babu, is one of the claimants in M.A.C.M.A.No.110 of 2015 and he was examined as P.W.1 in that case.

- (ii). Bokka Yesu, is one of the claimants in M.A.C.M.A.No.111 of 2015 and he was examined as P.W.1 in that case.
- (iii). Markapudi Kanta Rao, is one of the claimants in M.A.C.M.A.No.112 of 2015 and he was examined as P.W.1 in that case.
- (iv). Palaparathi Sekhar Babu, is one of the claimants in M.A.C.M.A.No.113 of 2015 and he was examined as P.W.1 in that case.
- (v). P.Ws.2 and 3, Bokka Rajani and Markapudi Elisamma, are the same witnesses in all the cases. They are eye witnesses to the accident.
- (vi). Ex.A1 is the FIR, Ex.A4 is the M.V.I. Report and Ex.A5 is the Charge Sheet. Exs.A1, A4 and A5 are same in all cases. Ex.A2 is the Inquest Report and Ex.A3 is the Post-mortem Report. Exs.A2 and A3 are relating to the respective deceased in that case.

V. Findings of the learned MACT:

7. The learned MACT quantified the compensation in respect of each case by taking income of the deceased with reference to evidence at Rs.3,000/- per month. However, found that there is contributory negligence on the part of the driver of the auto and that the owner and Insurance Company of the auto had not been added. There is equal contribution of negligence on the part of the drivers of both the auto and the lorry and fixed their liability at 50% each. Directed Insurance Company of lorry to pay 50% of the compensation arrived / calculated.

VI. Arguments in the appeal:

For the appellant-claimants:

- 8(i). The learned MACT erred in apportioning the liability and directing payment of only 50% of the compensation by the Insurance Company of the offending vehicle.
- (ii). Believing contributory negligence without there being any evidence of driver of either the auto or the lorry is not correct.
- (iii). The evidence as to contributory negligence is not properly appreciated although the evidence of P.W.2, an eye witness to the accident, is very clear.
- (iv). When there is evidence as to income of the deceased at Rs.200/- per day, adopting notional income is not correct.
- (v). Oral evidence of another coolie as to earnings of Rs.200/- per day has not been properly appreciated.

For respondent-Insurance Company:

- 9(i). The learned MACT in rightly apportioned negligence among the drivers of the two vehicles.
- (ii). There were '11' passengers in the auto at the time of accident. Therefore, there is negligence on the part of the driver of the auto and the same is properly considered by the learned MACT.
- (iii). The contribution of both the driver of auto and the lorry at 50% is rationally considered by the learned MACT.
- (iv). There are no grounds to interfere.

VII. Points:

10. Now the points that arise for determination in these appeals are:

- 1) Whether the pleaded accident has occurred owing to the contributory negligence of the driver of the auto and whether the findings of the learned MACT to that extent are sustainable and the apportionment of liability between the two vehicles involved in the accident is proper?
- 2) Whether the quantum of compensation awarded in respective M.V.O.P.s is proper?
- 3) Whether the impugned order and decree dated 14.10.2014 in M.V.O.P.No.281 of 2013 are sustainable in law and on facts or whether any interference is necessary? If so, on what grounds?
- 4) Whether the impugned order and decree dated 14.10.2014 in M.V.O.P.No.282 of 2014 are sustainable in law and on facts or whether any interference is necessary? If so, on what grounds?
- 5) Whether the impugned order and decree dated 14.10.2014 in M.V.O.P.No.213 of 2013 are sustainable in law and on facts or whether any interference is necessary? If so, on what grounds?
- 6) Whether the impugned order and decree dated 14.10.2014 in M.V.O.P.No.225 of 2013 are sustainable in law and on facts or whether any interference is necessary? If so, on what grounds?
- 7) What is the result of the appeal in M.A.C.M.A.No.110 of 2015?
- 8) What is the result of the appeal in M.A.C.M.A.No.111 of 2015?
- 9) What is the result of the appeal in M.A.C.M.A.No.112 of 2015?
- 10) What is the result of the appeal in M.A.C.M.A.No.113 of 2015?

11. The result of point Nos.7 to 10 depends on the findings on point Nos.3 to 6 and the answer to point nos.3 to 6 depends on the answer to point Nos.1 and 2.

Point No.1:

Negligence:

Analysis:

12(i). It is clear that, except the evidence of R.W.1, there is no other material placed by the respondent-Insurance Company to prove its stand as to contributory negligence on the part of the driver of the auto. The claimants, to discharge the burden, examined the eye witness to the accident.

(ii). R.W.1-G. Rama Krishna is working as an Assistant Manager in Respondent No.2-Insurance Company. He is not an eye witness to the accident. His evidence during cross examination is that it is true that the persons who died due to the accident are third parties as per the terms and conditions of the policy. All four cases are relating to the death. Respondent No.1 is the driver-cum-owner of the offending vehicle.

(iii). R.W.1 stated that the investigator appointed by the Insurance Company did not visit the place of the accident nor were the statements of any persons recorded. He has no personal knowledge about the charge sheet filed by the Police. The vehicle insured with the company is a heavy goods vehicle. The driver of the said vehicle is having driving licence. He cannot say the degree of negligence on the part of the driver of the vehicle insured with his Company. In the FIR and charge sheet it

is mentioned that the lorry bearing Registry No.A.P. 16 T W 6568 came on the extreme right and dashed the railing and fell into a ditch. A specific suggestion was given to R.W.1 that there was no negligence on the part of the driver of the auto.

13(i). One Bokka Rajini, P.W.2, is cited as L.W.2 in the charge sheet-Ex.A5. Her evidence is clear as to witnessing the accident and that respondent No.1, the driver of the offending vehicle, in a bid to overtake a another lorry proceeding ahead of his lorry, steered his vehicle to the extreme right in a rash and negligent manner, without taking any precautions and without blowing horn, hit the autorickshaw and the four persons died in the accident.

(ii). During cross-examination, she has stated that when the accident occurred, she was in the auto. She has mentioned about number of the persons travelling in the auto. She has denied the suggestion that due to overloading the auto, there was negligence and the accident occurred and she has added that the lorry came at a high speed and dashed the auto. Further, it is elicited that there was one person each on either side of the driver of the auto. To deny the negligence on the part of the respondent No.1, none are examined. At least, there is no oath against oath. The charge sheet is filed against respondent No.1.

14. R.W.1, in his cross examination, stated that he cannot say the directions and he did not visit the accident spot. It is also elicited that two vehicles can simultaneously pass on the highway.

15. When a charge sheet is specifically filed against the driver of the lorry, indicating him as an accused and when a witness has deposed about the negligence of the driver of the lorry and when it is clear that the driver of the lorry (offending vehicle), in the process of overtaking the lorry moving in front of the same came on the extremely right side of the road and dashed the auto, it can be understood that the offending vehicle came towards the right side and the auto, on the opposite side, was coming on the left side. It is not as if the auto came on the right side. The evidence is suggesting that the auto was coming on the left side and the offending vehicle viz. the lorry came on the right side and the same has contributed to the accident. Therefore, the auto coming in the wrong direction cannot be *prima facie* accepted. Further, the lorry being a heavy vehicle, its driver should have been more careful while overtaking another lorry moving in front of the offending vehicle. The absence of care on the part of the driver of the lorry is conspicuous.

16. The overloading in the auto contributing to the accident is not spoken to by anybody. The evidence regarding either of the drivers is not available. The evidence of P.W.2 is clear and categorical as to the negligence of the driver of the lorry and the crime record corroborates the same. Merely because there is an overload, it is not automatic to draw

the negligence on the part of the vehicle with an overload. Sometimes, there may be vehicles stationed with an overload. That does not mean that the said vehicle or its driver has contributed for accident.

17(i). In a substantially identical situation, like one carrying a motorcycle carrying two pillion riders as against the permissible one pillion rider, which is a violation in terms of Section 128 of the Motor Vehicles Act, whether negligence can be automatically inferred due to such violation was considered at length by a Full Bench of the Madhya Pradesh High Court in a case between ***Devi Singh vs. Vikram Singh and others***¹, the questions referred to the larger Bench are as follows:

- 1) *Whether by violation of section 128 of the Motor Vehicles Act, 1988 by a motorcyclist, a presumption can arise with regard to his negligence and thereby making it contributory as far as he is concerned?*
- 2) *Whether a pillion rider while being carried in a motorcycle in violation of section 128 of the Act contributes to the causation of the accident simply because of statutory violation, or negligence as a matter of fact should arise and further whether he can put forth the stance that there has been a composite negligence by the offending vehicle as well as by the driver of a two wheeled motorcycle?*

(ii). Relevant observations are made with reference to the march of law and the provisions in paragraph Nos.7 to 13. They are as follows:

7. In Ratanlal and Dhirajlal, the Law of Torts by Justice G.P. Singh, the following propositions of law regarding contributory negligence have been stated:

¹ 2007 SCC OnLine MP 418; AIR 2008 MP 18 (FB)

“It has to be noted that negligence of the plaintiff which can be described as contributory negligence must have causal connection with the damage suffered by him.”

“The question simply is whether the plaintiff or the deceased (in case of claims arising out of death) had failed to take reasonable care of his own safety which had contributed to the damage.”

Thus, there has to be some causal connection with the damage suffered by the claimant to hold that the conduct of the claimant amounted to contributory negligence. Similarly, there has to be some conduct on the part of the claimant showing absence of reasonable care of his own safety which had contributed to the damage.

8. *The meaning of “Contributory Negligence” as distinct from the “Negligence” has been very aptly brought out in the judgment of K.G. Balakrishnan, J. (as His Lordship then was) in Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak, (2002) 6 SCC 455 : AIR 2002 SC 2864 in para 8 at page 2866 in the following words:*

“The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as ‘negligence’. Negligence ordinarily means breach of a legal duty to care, but when used in the expression “contributory negligence” it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an ‘author of his own wrong’.”

It will be clear from what has been held by Balakrishnan, J., that negligence ordinarily means breach of a legal duty to take care, whereas contributory negligence

means the failure by a person to use reasonable care for the safety of either of himself or his property, so that he becomes blameworthy in part as an “author of his own wrong.”

9. In a decision of the Supreme Court in *Municipal Corporation of Greater Bombay v. Laxman Iyer*, (2004) 2 MPLJ (SC) 267 : 2004 ACJ 55, Arijit Pasayat, J., relying on *Charles-worth on Negligence*, has explained the meaning of ‘contributory negligence’ thus:

*“Where an accident is due to negligence of both parties, substantially there would be contributory negligence and both would be blamed. In a case of contributory negligence, the crucial question on which liability depends would be whether either party could, by exercise of reasonable care, have avoided the consequence of other's negligence. Whichever party could have avoided the consequence of other's negligence would be liable for the accident. If a person's negligent act or omission was the proximate and immediate cause of death, the fact that the person suffering injury was himself negligent and also contributed to the accident or other circumstances by which the injury was caused would not afford a defence to the other. Contributory negligence is applicable solely to the conduct of a plaintiff. It means that there has been an act or omission on the part of the plaintiff which has materially contributed to the damage, the act or omission being of such a nature that it may properly be described as negligence, although negligence is not given its usual meaning. (See *Charles-worth on Negligence*, 3rd Edn., Para 328).”*

*Pasayat, J., of the Supreme Court, relying on *Pollock on Torts* also explained “composite negligence” in the following words:*

“Where a person is injured without any negligence on his part but as a result of combined effect of the negligence of two other persons, it is not a case of contributory negligence in that sense. It is a case of what has been styled by Pollock as injury by composite negligence. (See Pollock on Torts, 15th Edn., p. 361).”

10. *In Oriental Fire and Genl. Ins. Co. Ltd. v. Sudha Devi, 1991 ACJ 4 S.B. Sinha, J., as a learned Judge of the Patna High Court was called upon to decide whether violation of section 85 of the Motor Vehicles Act, 1939, which is pari-materia with section 128 of the Act, amounts to contributory negligence on the part of the driver of a two wheeler and His Lordship held in para-55 at page 11 of the judgment as reported in the ACJ that violation of the provisions of the Motor Vehicles Act may not have anything to do with the theory of contributory negligence unless the vehicle is driven in violation of the traffic regulations.*

11. *Section 128 of the Act and Rule 123 of the Rules are quoted hereinbelow:*

“Section 128.*Safety measures for drivers and pillion riders — (1) No driver of a two wheeled motorcycle shall carry more than one person in addition to himself on the motorcycle and no such person shall be carried otherwise than sitting on a proper seat securely fixed to the motorcycle behind the driver's seat with appropriate safety measures.*

(2) In addition to the safety measures mentioned in sub-section (1), the Central Government may, prescribe other safety measures for the drivers of two wheeled motorcycles and pillion riders thereon.”

“R. 123.*Safety devices in motorcycle. — No motorcycle which has provision for pillion rider, shall be constructed without provision for a permanent hand grip on the side or behind the driver's seat and a foot rest and a*

protective device covering not less than half of the rear wheel so as to prevent the clothes of the person sitting on the pillion from being entangled in the wheel.”

12. *A plain reading of section 128 of the Act quoted above, would show that sub-section (1) casts a duty on the driver of a two wheeled motorcycle not to carry more than one person in addition to himself on the motorcycle. Similarly, Rule 123 of the Rules quoted above mentions the safety devices to be provided while manufacturing a motorcycle. These provisions obviously are safety measures for the drivers and pillion riders and breach of such safety measures may amount to “negligence” but such negligence will not amount to “contributory negligence” on the part of the pillion rider or “composite negligence” on the part of the driver of the motorcycle, unless such negligence was partly the immediate cause of the accident or damage suffered by the pillion rider as would be clear from the authorities discussed above.*

13. *Thus, we are of the considered opinion that if the damage in the accident has not been caused partly on account of violation of section 128 of the Act by the pillion rider of the motorcycle, the pillion rider is not guilty of contributory negligence. Similarly, if the damage suffered by the pillion rider has not been caused partly on account of violation of section 128 of the Act by the driver, the pillion rider cannot put up a plea of composite negligence by the driver. In other words, if breach of section 128 of the Act, does not have a causal connection with the damage caused to the pillion rider, such breach would not amount to contributory negligence on the part of the pillion rider of the motorcycle or composite negligence on the part of the driver of the motorcycle.*

18. In view of the aforesaid reasons and discussion, the apportionment of negligence between the two vehicles done by the learned MACT is found not correct in the facts and circumstances of the

case and in view of absence of specific evidence. In any event, the victims are third parties to both vehicles. For the reasons stated above, the findings of the learned MACT that the pleaded accident has occurred owing to the contributory negligence of the driver of the auto are found not sustainable and hence, the apportionment of liability among the two vehicles involved in the accident is found not proper. Point No.1 is answered accordingly against the Insurance Company and in favour of the claimants / appellants.

Point No.2:

Quantum of compensation:

Precedential guidance:

19(i). For having uniformity of practice and consistency in awarding just compensation, the Hon'ble Apex Court provided guidelines as to adoption of multiplier depending on the age of the deceased in ***Sarla Verma (Smt.) and Ors. Vs. Delhi Transport Corporation and Anr.***² and also the method of calculation as to ascertaining multiplicand, applying multiplier and calculating the compensation *vide* paragraph Nos.18 and 19 of the Judgment.

(ii). Further the Hon'ble Apex Court in ***National Insurance Company Ltd. v. Pranay Sethi and Others***³ case directed for adding future prospects at 50% in respect of permanent employment where the deceased is below 40 years, 30% where deceased is between 40-50

² 2009 (6) SCC 121

³ 2017(16) SCC 680

years and 15% where the deceased is between 50-60 years. Further, in respect of self employed etc., recommended addition of income at 40% for the deceased below 40 years, at 25% where the deceased is between 40-50 years and at 10% where the deceased is between 50-60 years. Further, awarding compensation under conventional heads like loss of estate, loss of consortium and funeral expenditure at Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively is also provided in the same Judgment.

(iii). Further in ***Magma General Insurance Company Ltd. v. Nanu Ram and Others***⁴, the Hon'ble Apex Court observed that the compensation under the head of loss of consortium can be awarded not only to the spouse but also to the children and parents of the deceased under the heads of parental consortium and filial consortium.

Just Compensation:

20. In ***Rajesh and others vs. Rajbir Singh and others***⁵, the Hon'ble Supreme Court in para Nos.10 and 11 made relevant observations, they are as follows:

10. Whether the Tribunal is competent to award compensation in excess of what is claimed in the application under Section 166 of the Motor Vehicles Act, 1988, is another issue arising for consideration in this case. At para 10 of Nagappa case [Nagappa v. Gurudayal Singh, (2003) 2 SCC 274 : 2003 SCC (Cri) 523 : AIR 2003 SC 674] , it was held as follows: (SCC p. 280)

⁴ (2018) 18 SCC 130

⁵ (2013) 9 SCC 54

“10. Thereafter, Section 168 empowers the Claims Tribunal to ‘make an award determining the amount of compensation which appears to it to be just’. Therefore, the only requirement for determining the compensation is that it must be ‘just’. There is no other limitation or restriction on its power for awarding just compensation.”

The principle was followed in the later decisions in Oriental Insurance Co. Ltd. v. Mohd. Nasir [(2009) 6 SCC 280 : (2009) 2 SCC (Civ) 877 : (2009) 2 SCC (Cri) 987] and in Ningamma v. United India Insurance Co. Ltd. [(2009) 13 SCC 710 : (2009) 5 SCC (Civ) 241 : (2010) 1 SCC (Cri) 1213]

11. Underlying principle discussed in the above decisions is with regard to the duty of the court to fix a just compensation and it has now become settled law that the court should not succumb to niceties or technicalities, in such matters. Attempt of the court should be to equate, as far as possible, the misery on account of the accident with the compensation so that the injured/the dependants should not face the vagaries of life on account of the discontinuance of the income earned by the victim.

Analysis:

21. All the deceased are coolies and the income claimed by them is Rs.200/- per day. The learned MACT has taken the income at Rs.100/- per day. However, the learned MCT ought to have added future prospects, taking note of the age, but did not do the same. Hence, it is necessary to add future prospects and calculate the compensation.

22. In view of the reasons and evidence referred above, the entitlement of the claimants for reasonable compensation in comparison to the compensation awarded by the learned MACT is found as follows:

Sl. No	Head	Deceased No.1 (Palaparthi Parvathi) in M.V.O.P.No.281 of 2013 / M.A.C.M.A.No.110 of 2015		Deceased No.2 (Bokka Mahalakshmi) in M.V.O.P.No.282 of 2014 / M.A.C.M.A.No.111 of 2015		Deceased No.3 (Mariyamma) in M.V.O.P.No.213 of 2013 / M.A.C.M.A.No.112 of 2015		Deceased No.4 (Aruna Kumari @ Chanti) in M.V.O.P.No.225 of 2013 / M.A.C.M.A.No.113 of 2015	
		Adopted by the learned MACT	Fixed by this Court	Adopted by the learned MACT	Fixed by this Court	Adopted by the learned MACT	Fixed by this Court	Adopted by the learned MACT	Fixed by this Court
1.	Income of the deceased (per annum)	Rs.36,000/-	Rs.36,000/-	Rs.36,000/-	Rs.36,000/-	Rs.36,000/-	Rs.36,000/-	Rs.36,000/-	Rs.36,000/-
2.	Age of the deceased	25	25	44	44	25	25	40	40
3.	Future prospects	-Nil-	40%	-Nil-	25%	-Nil-	40%	-Nil-	25%
4.	Income on adding future prospects	-Nil-	Rs.50,400/-	-Nil-	Rs.45,000/-	-Nil-	Rs.50,400/-	-Nil-	Rs.45,000/-
5.	Deduction towards personal expenses	1/3 rd	1/3 rd	1/2	1/3 rd	1/2	1/3 rd	1/2	1/3 rd
6.	Multiplicand	Rs.24,000/-	Rs.33,600/-	Rs.18,000/-	Rs.30,000/-	Rs.18,000/-	Rs.33,600/-	Rs.18,000/-	Rs.30,000/-
7.	Multiplier	18	18	14	14	18	18	15	15
8.	Loss of dependency	Rs.4,32,000/- (Rs.24,000/- x 18)	Rs.6,04,800/- (Rs.33,600/- x 18)	Rs.2,52,000/- (Rs.18,000/- x 14)	Rs.4,20,000/- (Rs.30,000/- x 14)	Rs.3,24,000/- (Rs.18,000/- x 18)	Rs.6,04,800/- (Rs.33,600/- x 18)	Rs.2,70,000/- (Rs.18,000/- x 15)	Rs.4,50,000/- (Rs.30,000/- x 15)
9.	Loss of estate	-Nil-	Rs.15,000/-	-Nil-	Rs.15,000/-	-Nil-	Rs.15,000/-	-Nil-	Rs.15,000/-
10.	Funeral expenditure	Rs.10,000/-	Rs.15,000/-	-Nil-	Rs.15,000/-	-Nil-	Rs.15,000/-	-Nil-	Rs.15,000/-
11.	Loss of consortium	Rs.10,000/- @ 1 st petitioner	Rs.1,20,000/- @ (Rs.40,000/- x 3)	Rs.10,000/- @ 1 st petitioner	Rs.1,20,000/- @ (Rs.40,000/- x 3)	Rs.10,000/- @ 1 st petitioner	Rs.80,000/- @ (Rs.40,000/- x 2)	Rs.10,000/- @ 1 st petitioner	Rs.1,20,000/- @ (Rs.40,000/- x 3)
12.	Loss of love and affection	Rs.20,000/- (Rs.10,000x2))- @ petitioners Nos.2 and 3	-Nil-	Rs.30,000/- (Rs.10,000x3))- @ petitioners Nos.1 to 3	-Nil-	Rs.10,000/- @petitioner No.2	-Nil-	Rs.20,000/- (Rs.10,000x2))- @ petitioners Nos.2 and 3	-Nil-
	Total	Rs.4,72,000/- But awarded Rs.2,36,000/-	Rs.7,54,800/-	Rs.2,92,000/- But awarded Rs.1,46,000/-	Rs.5,70,000/-	Rs.3,44,000/- But awarded Rs.1,72,000/-	Rs.7,14,800/-	Rs.3,00,000/- But awarded Rs.1,50,000/-	Rs.6,00,000/-

23. In view of the discussion made above, claimants in respective M.V.O.Ps are entitled for compensation *vide* M.V.O.P.No.281 of 2013; M.V.O.P.No.282 of 2014, M.V.O.P.No.213 of 2013 and M.V.O.P.No.225 of 2013 at Rs.7,54,800/-, Rs.5,70,000/-, Rs.7,14,800/- and Rs.6,00,000/- respectively. Therefore, Point No.2 is answered accordingly.

Point No.3:

24. In view of the discussion made above, the point No.3 is answered concluding that the claimants in M.V.O.P.No.281 of 2013 are entitled for compensation of Rs.7,54,800/- with interest at the rate of 6% per annum from the date of petition till the date of realization. Therefore, the impugned order and decree dated 14.10.2014 passed by the learned MACT in M.V.O.P.No.281 of 2013 require modification accordingly.

Point No.4:

25. In view of the discussion made above, the point No.4 is answered concluding that the claimants in M.V.O.P.No.282 of 2014 are entitled for compensation of Rs.5,70,000/- with interest at the rate of 6% per annum from the date of petition till the date of realization. Therefore, the impugned order and decree dated 14.10.2014 passed by the learned MACT in M.V.O.P.No.282 of 2014 require modification accordingly.

Point No.5:

26. In view of the discussion made above, the point No.5 is answered concluding that the claimants in M.V.O.P.No.213 of 2013 are entitled for compensation of Rs.7,14,800/- with interest at the rate of 6% per annum from the date of petition till the date of realization. Therefore, the impugned order and decree dated 14.10.2014 passed by the learned MACT in M.V.O.P.No.213 of 2013 require modification accordingly.

Point No.6:

27. In view of the discussion made above, the point No.6 is answered concluding that the claimants in M.V.O.P.No.225 of 2013 are entitled for compensation of Rs.6,00,000/- with interest at the rate of 6% per annum from the date of petition till the date of realization. Therefore, the impugned order and decree dated 14.10.2014 passed by the learned MACT in M.V.O.P.No.225 of 2013 require modification accordingly.

Granting of more compensation than what claimed, if the claimants are otherwise entitled:-

28. The legal position with regard to awarding more compensation than what claimed has been considered and settled by the Hon'ble Supreme Court holding that there is no bar for awarding more compensation than what is claimed. For the said proposition of law, this Court finds it proper to refer the following observations of the Hon'ble Supreme Court made in:

- (1) **Nagappa vs. Gurudayal Singh and Others**⁶, at para 21 of the judgment, that –

“..there is no restriction that the Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award “just” compensation, which is reasonable on the basis of evidence produced on record.”

- (2) **Kajal vs. Jagadish Chand and Ors.**⁷ at para 33 of the judgment, as follows:-

⁶ (2003) 2 SCC 274

⁷ 2020 (04) SCC 413

“33. We are aware that the amount awarded by us is more than the amount claimed. However, it is well settled law that in the motor accident claim petitions, the Court must award the just compensation and, in case, the just compensation is more than the amount claimed, that must be awarded especially where the claimant is a minor.”

(3) ***Ramla and Others vs. National Insurance Company Limited and Others***⁸ at para 5 of the judgment, as follows:-

“5. Though the claimants had claimed a total compensation of Rs 25,00,000 in their claim petition filed before the Tribunal, we feel that the compensation which the claimants are entitled to is higher than the same as mentioned supra. There is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or Court under Section 168 of the Motor Vehicles Act, 1988 is to award “just compensation”. The Motor Vehicles Act is a beneficial and welfare legislation. A “just compensation” is one which is reasonable on the basis of evidence produced on record. It cannot be said to have become time-barred. Further, there is no need for a new cause of action to claim an enhanced amount. The courts are duty-bound to award just compensation.”

Point Nos.7 to 10:

29. For the aforesaid reasons and in view of the conclusions drawn under the point Nos.1 to 6, in the result,

(A) M.A.C.M.A.No.110 of 2015:

- (i) The appeal is allowed.
- (ii) Compensation awarded by the learned MACT in M.V.O.P.No.281 of 2013 at Rs.2,36,000/- with interest at the rate

⁸ (2019) 2 SCC 192

of 7.5% per annum is modified and enhanced to Rs.7,54,800/- with interest at the rate of 6% per annum from the date of petition till the date of realization.

Apportionment:

- (iii) Claimant No.1 / the husband of the deceased No.1 is entitled for Rs.2,54,800/- with proportionate interest and costs.
- (iv) Claimant Nos.2 and 3 / the daughters of the deceased No.1 are entitled for Rs.2,50,000/- each with proportionate interest.
- (v) Claimant Nos.2 and 3 / minor daughters are entitled to withdraw the amount on attaining majority subject to the necessary recognition as majors and permission by the learned MACT as per the law.

(B) M.A.C.M.A.No.111 of 2015:

- (vi) The appeal is allowed.
- (vii) Compensation awarded by the learned MACT in M.V.O.P.No.282 of 2014 at Rs.1,46,000/- with interest at the rate of 7.5% per annum is modified and enhanced to Rs.5,70,000/- with interest at the rate of 6% per annum from the date of petition till the date of realization.

Apportionment:

- (viii) Claimant No.1 / the husband of the deceased No.2 is entitled for Rs.2,70,000/- with proportionate interest and costs.

- (ix) Claimant Nos.2 and 3 / the sons of the deceased No.2 are entitled for Rs.1,50,000/- each with proportionate interest.

(C) M.A.C.M.A.No.112 of 2015:

- (x) The appeal is allowed.
- (xi) Compensation awarded by the learned MACT in M.V.O.P.No.213 of 2013 at Rs.1,72,000/- with interest at the rate of 7.5% per annum is modified and enhanced to Rs.7,14,800/- with interest at the rate of 6% per annum from the date of petition till the date of realization.

Apportionment:

- (xii) Claimant No.1 / the husband of the deceased No.3 is entitled for Rs.3,14,800/- with proportionate interest and costs.
- (xiii) Claimant No.2 / the daughter of the deceased No.3 is entitled for Rs.4,00,000/- with proportionate interest.
- (xiv) Claimant No.2 / minor daughter is entitled to withdraw the amount on attaining majority subject to the necessary recognition as major and permission by the learned MACT as per the law.

(D) M.A.C.M.A.No.113 of 2015:

- (xv) The appeal is allowed.
- (xvi) Compensation awarded by the learned MACT in M.V.O.P.No.225 of 2013 at Rs.1,50,000/- with interest at the rate of 7.5% per annum is modified and enhanced to Rs.6,00,000/-

with interest at the rate of 6% per annum from the date of petition till the date of realization.

Apportionment:

- (xvii) Claimant No.1 / the husband of the deceased No.4 is entitled for Rs.2,00,000/- with proportionate interest and costs.
- (xviii) Claimant Nos.2 and 3 / the sons of the deceased No.4 are entitled for Rs.2,00,000/- each with proportionate interest.

(E) Court fee:

- (xix) Respective claimants in each case are liable to pay the Court fee for the enhanced part of the compensation, before the learned MACT.

(F) Liability:

- (xx) Respondent No.2 in each case before the learned MACT is liable to pay the compensation amount in view of the Insurance Policy.

(G) Time for Deposit and Mode of Payment:

- (xxi) Time for payment / deposit of balance amount is two months.
 - (a) If the claimants furnish the bank account number within 15 days from today, Respondent No.2 / Insurance Company shall deposit the amount directly into the bank account of the claimants and file the necessary proof thereof before the learned MACT.
 - (b) If the claimants fail to comply with xxi (a) above, Respondent No.2 / Insurance Company shall deposit the amount before

the learned MACT and the claimants are entitled to withdraw
the amount at once on deposit.

(H) Costs:

(xxii) There shall be no order as to costs, in the appeals.

30. As a sequel, miscellaneous petitions, if any, pending in these appeals
shall stand closed.

A. HARI HARANADHA SARMA, J

Date:25.08.2026

Note:L.R. copy to be marked.

(B/o).

Knr

Whether the order is:

Speaking		Reasoned	✓
Reportable	✓	Non-reportable	

HON'BLE SRI JUSTICE A. HARI HARANADHA SARMA

M.A.C.M.A.Nos.110, 111, 112 and 113 of 2015

25th August, 2026

Knr